IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 266 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE H.H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

HAJI HASAMHAJI YAKOOB

Versus

STATE OF GUJ

Appearance:

MR YOGESH S LAKHANI for Petitioner

MR ST MEHTA, Ld. APP for Respondent No. 1

CORAM : MR.JUSTICE H.H.MEHTA

Date of decision: 25/08/2000

ORAL JUDGEMENT

1. This is a Criminal Revision Application filed under Section 401 read with Section 397 of the Code of Criminal Procedure, 1973 (in short `Cr.P.C.') challenging the correctness, legality, propriety and regularity of judgment dated 9th May, 1989, rendered by In-charge

Sessions Judge (who will be referred to hereinafter as `the learned Appellate Judge'), Jamnagar, in Criminal Appeal No.16 of 1989. The learned Appellate Judge by partly allowing the said appeal filed by the accused, set aside the conviction and sentence passed against accused for offence punishable under sec.10 of the Maritime Zones of India (Regulation of Fishing By Foreign Vessels) Act, 1981 (which will be referred to hereinafter as `the Act') for contravention of sec.3 of the Act. He was pleased to confirm the order of conviction passed against accused for an offence punishable under sec.4 of the Passport Act. Simultaneously, he was pleased to confiscate the muddamal articles i.e. boats and articles, money etc. which were found from that boats and seized by the investigating officer. Thus, the learned Appellate Judge has partly confirmed the judgment dated 2nd March, 1989, rendered by the learned J.M.F.C., Dwarka, (who will be referred to hereinafter as `the learned Magistrate') in Criminal Case No.656/88 and partly set aside the order of sentence and conviction for an offence punishable under sec.10 of the Act.

2. Here in this Criminal Revision Application the petitioner was accused no.4 in Criminal Case No.656/88 pending before the learned Magistrate and opponents No.2,3 & 4 were accused No. 1, 2 and 3 respectively in aforesaid Criminal Case No.656/88. The revision-opponent is the State of Gujarat i.e. Prosecution. For the convenience, the parties will be referred to hereinafter as the complainant, Prosecution and respective accused respectively at appropriate places.

3. The facts leading to this present Criminal Revision Application in a nutshell are as follows:

3.1 On or about 2nd March, 1988, during the period from 9.00 a.m.to 11.15 a.m. all the accused were found fishing with their vessels in Maritime Zones of India, and at that time they had no pass, permit or licence issued in their favour under the provisions of the Act. As per the case of the prosecution, witness Amratsing Anandsing Rathod, who is the complainant was keeping watch over the activities in the Maritime Zones. As per his evidence, when he reached near the place Jakhav, he found that there were four boats of Taiwan and accused were found present in that boats. That boats were intercepted and accused were found fishing in the sea within the Maritime Zone of India. The complainant recorded statements of the witnesses and thereafter he lodged his complaint in the police station.

4. After investigation the chargesheet was filed against all the accused in the Court of the learned Magistrate at Dwarka. Charge was framed at Exh.4. Accused pleaded not guilty to the charge. Prosecution examined certain witnesses in support of the case of the prosecution. Prosecution also produced certain documentary evidence. Thereafter, after hearing the arguments of the learned advocates for both the parties, and after perusal of the record and proceedings of the case, and after appreciating the evidence led by the prosecution, the learned Magistrate rendered his judgment on 2nd March, 1989, and by that judgment, he was pleased to convict all the accused for an offence punishable under Sec.10 of the Act for contravention of sec.3 of the Act, and also for an offence punishable under Sec.14 for contravention of Sec.7 of the Act. The learned Magistrate did not inflict any separate sentence for an offence punishable under Sec.14 of the Act for contravention of sec.7 of the Act, but he was pleased to inflict sentence to each accused to undergo rigorous imprisonment for one year and to pay fine of Rs.10,000/and, in default, to undergo further simple imprisonment for 45 days. The learned Magistrate was also pleased to convict all the accused for offence punishable under sec.12 of the Passport Act, 1967, for contravention of sec.3 and 6 of the Passport Act, 1967, with a further direction that both the sentences will run concurrently. As per the judgment of the learned Magistrate, he was pleased to confiscate four boats and articles found from that boats in exercise of his power conferred under sec.13 of the Act.

4.1 Being aggrieved against and dissatisfied with aforesaid judgment of the conviction and sentence, all the accused preferred a Criminal Appeal No.16/89 to the Sessions Court, Jamnagar. In that appeal, the learned Appellate Judge heard the arguments of the learned advocates for both the parties and after perusing the record and proceedings of the case and after appreciating the evidence led by the prosecution, the learned Appellate Judge rendered his judgment in Criminal Appeal No.16/89 on 9th May, 1989. By that judgment, he was pleased to set aside the conviction and sentence inflicted on each accused for offence punishable under sec.10 of the Act for contravention of sec.3 of the Act. By that judgment he confirmed the rest part of the judgment of conviction and sentence dated 2nd March, 1989, rendered by learned Magistrate in Criminal Case No.656/88.

4.2 Being aggrieved against and dissatisfied with the

said judgment dated 9th May, 1989, rendered by the learned Appellate Judge in Criminal Appeal No.16/89, the only accused No.4 has preferred this Criminal Revision Application. He has joined original accused No.1 to 3 as revision opponents No.2 to 4 respectively in this present Criminal Revision Application.

5. During the pendency of this Criminal Revision Application, this Court (Coram: V.H.Bhairavia,J) passed following order on 14.6.91:

> "L.A. for the petitioner seeks permission to delete respondent Nos. 2 to 4. Respondents No.2 to 4 are permitted to be deleted."

and, therefore, names of respondents No. 2 to 4 have been deleted from this present Criminal Revision Application.

6. I have heard Shri Y.S.Lakhani, learned advocate for the petitioner and Shri S.T.Mehta, learned APP for the State i.e. revision-opponent No.1 in detail at length. I have gone through the judgment of the learned Appellate Judge which is challenged in this criminal Revision Application.

7. Shri Lakhani, learned advocate for the petitioner has argued that both the Courts below have not appreciated the evidence of prosecution witnesses in proper perspective, more particularly, in the light of the complaint itself and the documentary evidence produced at a later stage before the court. He has further argued that learned Judges of the courts below have not taken into consideration the contradictions found in the evidence of witnesses examined by the prosecution. That contradictions are material one and that affect the prosecution case from the root. He has further argued that looking to evidence of prosecution, the learned Appellate Judge ought to have allowed the appeal fully and set aside the order of conviction and sentence passed by the learned Magistrate. Thus, Shri Lakhani has argued the case on the basis of facts and the oral evidence appreciated by the learned Appellate Judge.

8. Shri S.T.Mehta, learned APP for the revision-opponent No.1 has argued that, scope and ambit of section 401 read with sec.397 of Cr.P.C. are very much limited and circumscribed. He has argued that High Court can exercise this revision powers in rare cases and the High Court can not interfere with the concurrent findings of the facts arrived by both the courts below.

9. I have gone through the judgment challenged in this Criminal Revision Application, I find no material to hold that judgment is incorrect or illegal and in no case it can be said to be a perverse judgment. The learned Appellate Judge has appreciated the evidence led by the prosecution keeping in mind the well settled principles of law with regard to appreciation of oral as well as documentary evidence.

10. When both the courts below have given concurrent and consistent findings on facts, this Court finds that there is nothing on record which has been pointed out by Mr.Lakhani to show that the judgment is illegal or incorrect.

11. Under the circumstances, this Court finds that this is not a case in which interference should be made by this court. Under the circumstances, this Criminal Revision Application deserves to be dismissed and hence it is accordingly dismissed. Rule is discharged. Interim relief granted earlier, if any, stands vacated.

(H.H. Mehta, J.)

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